

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION

FILED

FREDERICK MILAN,

Claimant,

v.

CLAIM NO. 20-090-876
Regular Docket

STATE OF TENNESSEE,

Defendant.

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Tennessee Claims Commission
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ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This claim comes before the Claims Commission on the motion of the Defendant to dismiss, Claimant's response thereto, *Defendant's Reply to the Claimant's Response to the Defendant's Motion to Dismiss* and, indeed, the record as a whole.

Claimant, Frederick Milan, an inmate currently incarcerated at the Hardeman County Correction Facility, hereinafter referred to as HCCF, filed a claim for reimbursement of funds totaling five hundred thirty two dollars (\$532.00) allegedly wrongfully withdrawn from his inmate trust account. Claimant alleges that he is entitled to the funds pursuant to an unreported September 26, 2008 decision of the

Tennessee Court of Criminal Appeals which reverses Claimant's aggravated assault conviction and resulting fine and remands the case back to the trial court for retrial. *State v. Frederick Milan*, 2008 WL 4378172, *19 (Tenn. Crim. App.)

In support of its motion to dismiss, the State argues that only the trial court can alter, amend or order reimbursement of costs and fines it has assessed.

In *State v. Henry*, 946 S.W.2d 833 (Tenn. Crim. App.1997), the Tennessee Supreme Court reversed a criminal defendant's consecutive sentences for aggravated rape and ordered they be run concurrently. After he had difficulty getting the Tennessee Department of Correction, hereinafter referred to as TDOC, to recalculate his pretrial jail credits, Defendant filed a motion to amend the trial court judgments to reflect equal pretrial jail credit on each count; the trial court concluded that Defendant was entitled to pretrial jail credit only as to one case.

The Court of Criminal Appeals held that the trial court properly entertained the request for pretrial jail credits and ordered the trial court to either amend one of Claimant's judgments to include pretrial

credits or enter an order specifying the applicable incarceration dates and the reason for denial.

In the case at bar, the Court of Criminal Appeals has remanded the case, and specifically, the issue regarding the fine, to the trial court. The Commission **FINDS** that it has no authority under Tenn. Code Ann. Sec. 9-8-307 to provide the relief Claimant seeks.

IT IS THEREFORE ORDERED that this claim is **DISMISSED** with prejudice.

Entered on this the 4th day of November, 2009.



NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Order has been mailed
to:

Mr. Frederick Milan, #168040
HCCF
P.O. Box 549
Whiteville, TN 38075

Mr. David S. Sadlow, Esq.
Assistant Attorney General
Civil Rights and Claims Division
P.O. Box 20207
Nashville, TN 37202-0207

This the 5th day of November, 2009.


MARSHA RICHESON, CLERK
Tennessee Claims Commission